UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	3:99CR264(AHN)
LUKE JONES, ET AL.	:	

RULING ON MOTION FOR VOLUNTARY RECUSAL

Defendant Luke Jones ("Jones") has filed this motion for voluntary recusal pursuant to 28 U.S.C. §§ 455(a), 455(b)(1), and 144 [doc. # 1047]. Co-defendants Lance Jones, Leonard Jones, Lyle Jones, and Willie Nunley have adopted this motion (collectively, "the movants") [docs. # 1066, 1064, 1067, 1072].

This court has previously considered two other motions for voluntary recusal filed by Jones; both were denied in separate rulings [docs. # 353, 673]. In the first motion [doc. # 337], Jones contended that the court had demonstrated a pattern of favoritism toward the government and a bias against the defendants. In the second motion [doc. # 630],[1] Jones asserted that the court's statements at the December 15, 2000, sentencing hearing of David Nunley ("Nunley"), a co-defendant and cooperating witness for the government, created

[1] The second motion was styled as a "joint motion" on behalf of Jones and co-defendant Lyle Jones.

an objectively reasonable basis for questioning the Court's impartiality.

In this third motion for voluntary recusal, Jones revisits the arguments raised in his second motion and now contends that the court's statements and rulings at his own sentencing hearing on October 24, 2001, call into question its ability to conduct a fair trial. For the reasons discussed below, Defendant Jones's third motion for voluntary recusal is DENIED.

FACTS

In November, 2000, this court presided over the drug conspiracy trial of five defendants who were alleged to be members of a criminal organization that operated out of the P.T. Barnum Housing Project in Bridgeport, Connecticut. Although Jones was not on trial at that time, a significant amount of the government's evidence related to his leadership role and active participation in the drug conspiracy. Among that evidence was the testimony of Nunley, a co-defendant, who had pleaded guilty and entered into a cooperation agreement with the government.

During each day of the month-long trial, Jones's family and friends were present in the courtroom and frequently displayed their displeasure with the government's witnesses,

particularly cooperating witnesses such as Nunley, by making threatening gestures and hostile remarks. In addition, these spectators directed racial epithets such as “spic” and “Uncle Tom” at Assistant United States Attorney ("AUSA") Alex Hernandez, AUSA Alina Marquez, Drug Enforcement Agent Milton Tyrell, and Detective Sanford Dowling of the Bridgeport Police Department. See Transcript of Sentencing Hearing of David Nunley (“Nunley Sentencing”) at 14; Transcript of Sentencing Hearing of Luke Jones (“Jones Sentencing”) at 37-38. Based on its daily observations during trial, the court concluded that Jones’s family and friends were creating a tense atmosphere in the courtroom that was intended to intimidate the government and its witnesses. Nevertheless, all but one of the defendants were convicted on all counts.

A. Sentencing Hearing of David Nunley on December 15, 2000

Thereafter, in connection with Nunley's sentencing on December 15, 2000, the government filed a motion for downward departure pursuant to U.S.S.G. § 5K1.1 based on his substantial assistance in the successful prosecution of the five defendants tried in November, 2000. In crediting Nunley with substantial assistance, the court based its decision to grant the government’s motion on several factors, including the fact that Nunley’s cooperation exposed him and his family

to serious danger and a real threat of reprisal. Recognizing the gravity of Nunley's decision to cooperate with the government, the court heard statements from Nunley's family members in support of the government's motion and remarked that Nunley had a "wonderful, supportive family" who "deserve[d] a lot of credit for supporting [him]." See Nunley Sentencing at 20-21. In doing so, the court further recognized the "sharp contrast" in the courtroom behavior of the Nunley and Jones families: "The family of the Jones defendants are in total denial, and their conduct in this courtroom during the course of that trial was the most outrageous that I've ever experienced in the 15 years that I've sat on the bench . . . . [I]t's significant . . . [that the Jones family] talked about their friends and relatives being railroaded . . . because it probably shows why the [Jones] defendants are so defiant." Id. at 20.[2] The court also stated that it hoped Nunley's sentence could be reduced further prior to his scheduled release date. See id. at 22-

[2] In fact, Lela Jones, the defendant's sister, called this court a "bastard" in open court at Jones's sentencing hearing. See Jones Sentencing at 33. After directing the United States Attorney's Office to file the necessary paperwork to conduct a hearing to determine whether she was in contempt of court, this court referred that matter to a different judge. Jones's moving papers do not raise that incident as a basis for the recusal motion.

23.

B. Sentencing of Luke Jones on October 24, 2001

On September 20, 2000, Luke Jones pleaded guilty to the charge of possession of a firearm by a convicted felon in violation of Title 18, United States Code, §§ 922(g)(1) and 924(a)(1). At his sentencing hearing on October 24, 2001, the government moved for an upward departure pursuant to U.S.S.G. § 4A1.3. Having reviewed Jones's criminal history in the Presentence Report ("PSR") and his documented pattern of returning to prison shortly after being released on parole, this court commented: "So, clearly you learned nothing from your prison experience, and perhaps, based on your record, you enjoy being in prison because you certainly made every effort to get back to prison by virtue of your criminal record following your release on the manslaughter charge. So that record says to me that the possibility that you would be a recidivist or a repeat offender is very, very, very, very high." Jones Sentencing at 32-33.

Furthermore, in fashioning Jones's sentence, the court considered evidence adduced at other trials substantiating that Jones had possessed a firearm in connection with the felony offense of narcotics trafficking: "Defendant was in a car with others who have been involved in narcotics

trafficking, his name has come up countless times in trial testimony of cooperating witnesses and others, naming him as one of major persons involved in drug trafficking in P.T. Barnum, . . . he had in his possession [police] scanners, was wearing a bulletproof vest, [and] was in the company of Lance and Lonnie [Jones], who were involved in narcotics trafficking." Id. at 25-26. Accordingly, the court granted the government's motion for upward departure and sentenced him for a period of 120 months.

STANDARD

A district court is required to recuse itself pursuant to 28 U.S.C. § 455(a) when its "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Section 455(b)(1) mandates recusal in specific circumstances when actual bias is shown. See 28 U.S.C. § 455(b)(1) (requiring judge to disqualify himself, among other situations, when "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding").[3]

[3] "Courts considering the substantive standards of §§ 144 and 455(b)(1) have concluded that they are to be construed in *pari materia* . . . [t]he analysis is the same under both sections, that is, it looks to extrajudicial conduct as the basis for making such a determination, not conduct which arises in a judicial context." Apple v. Jewish Hosp. & Med. Cntr., 829 F.2d 326, 333 (2d Cir. 1987)(internal citations omitted).

Section 455(a) provides a broader ground for recusal than either § 455(b)(1) or § 144 because § 455(a) mandates disqualification in situations involving not only actual bias but also the appearance of bias. Apple v. Jewish Hosp. & Med. Cntr., 829 F.2d 326, 333 (2d Cir. 1987)(internal citations omitted).

The Second Circuit has articulated the following standard for recusal under § 455(a): "Would a reasonable person, knowing all the facts, conclude that the trial judge's impartiality could reasonably be questioned? Or phrased differently, would an objective, disinterested observer fully informed of the underlying facts, entertain significant doubt that justice would be done absent recusal?" United States v. Bayless, 201 F.3d 116, 126 (2d Cir.) (quoting Diamondstone v. Macaluso, 148 F.3d 113, 120-21 (2d Cir. 1998)), cert. denied, 529 U.S. 1061 (2000). This inquiry is “to be determined not by considering what a straw poll of the only partly informed man-in-the-street would show[,] but by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.” Id. at 127 (internal quotation marks omitted). It is important to remember that “[a] judge is as much obliged not to recuse himself when it is not called for

as he is obliged to when it is." In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1312 (2d Cir. 1988), cert. denied sub nom. Milken v. SEC, 490 U.S. 1102 (1989).

Furthermore,"[o]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Liteky v. United States, 510 U.S. 540, 555 (1994) (emphasis added). In addition, "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." Id.; see also United States v. Coven, 662 F.2d 162, 168 (2d Cir. 1981) (holding that knowledge acquired by the judge while he performs judicial duties does not constitute grounds for disqualification), cert. denied, 456 U.S. 916 (1982). As a general rule, the alleged bias must stem from an "extrajudicial source" – that is, the alleged prejudice cannot derive solely from the court's rulings or statements from the bench. See Liteky, 510 U.S. at 555; see also United States v. Grinnell Corp., 384 U.S. 563, 583 (1966) ("[t]he alleged bias and prejudice to be disqualifying must

stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case") (citation omitted).

DISCUSSION

Jones sets forth three grounds for recusal. First, he contends that the court's remarks at the Nunley sentencing hearing, which contrasted the courtroom conduct of the Jones and Nunley families, demonstrates an impermissible personal bias against Jones. Second, Jones asserts that the court's observation about his pattern of returning to prison shortly after being released on parole "[i]mpli[es] that this court has adjudicated the defendant as guilty before trial." Jones Mem. in Sup. of Mot. for Voluntary Recusal ("Jones Mem.") at 9. Third, he argues that the court's consideration of evidence from other trials regarding Jones's involvement in narcotics trafficking indicates that it believes Jones "was involved in a drug distribution ring before he has been tried for such an offense." Id. at 8. None of these grounds constitutes a sufficient basis for recusal under 28 U.S.C. §§ 455(a), 455(b)(1), or 144.

First, the court's statements made at the Nunley and Jones sentencing hearings do not constitute grounds for disqualification because those comments do not manifest "deep-

seated favoritism or antagonism that would make fair judgment impossible." Liteky, 510 U.S. at 555. Moreover, these statements were based entirely on observations made while presiding over criminal proceedings involving, or relating to, Jones or the movants. See id. In fact, the court's comments regarding the courtroom behavior of Jones's family and friends were highly relevant to its ruling on the government's § 5K1.1 motion seeking a sentence reduction for Nunley as a cooperating witness. As noted by AUSA Hernandez, Jones' family and friends created a hostile, tense environment that permeated the courtroom when Nunley testified:

> I know I made a point of putting information on the record periodically, about the way the friends and family, the hangers-on, the people who used to ride the Jones gravy train, were making over here on this side of the courtroom during the conduct of the trial. . . .
>
> We were at the prosecution table over here, subjected to cat calls, snickering, racial epithets directed at Ms. Marquez, myself, Special Agent Tyrell and Detective Sanford Dowling.
>
> Mr. Nunley had to sit there on the witness stand, facing this side of the courtroom, while this parade of hangers-on leered, snickered and, you know, really created what I thought was a very tense and intimidating situation.

Nunley Sentencing at 13-14.

Nunley testified against former friends and fellow drug traffickers in front of a hostile crowd that was attempting to

intimidate him. In deciding to grant the downward departure, this court appropriately factored into its decision-making process the adverse circumstances that Nunley faced in the courtroom.

Second, the record provides factual support for the court's statement regarding Jones's propensity to return to prison soon after being released. After serving nine years for manslaughter, Jones was released in May, 1994, only to return to prison in May, 1995, after violating the terms of parole. After being paroled again in August, 1996, Jones was arrested at least six other times. See Jones Sentencing at 32. Unsurprisingly, Jones's motion does not challenge the factual accuracy of the court's statements. Moreover, even if the court's comments did reflect frustration with or disapproval of Jones, this would not be a sufficient ground for recusal. Such comments are simply "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display." Liteky, 510 U.S. at 555-556; see In re J.P. Linahan, Inc., 138 F.2d 650, 654 (2d Cir. 1943) ("If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions.")

The cases cited by Jones in support of his motion involve judicial conduct that bears little resemblance to the court's statements in the instant case. See United Sates v. Edwardo-Franco, 885 F.2d 1002, 1005 (2d Cir. 1989) (judge's statements regarding alleged drug traffickers who were immigrants that "they should have stayed where they were" and that "[n]obody tells them to come and get involved in cocaine"); United States v. Antar, 53 F.3d 568, 573 (3d Cir. 1995) (judge's statement that "[m]y object in this case from day one has always been to get back to the public that which was taken from it as a result of the fraudulent activities of this defendant and others").

Furthermore, there is no merit to Jones's claim that the court's statements indicate it has decided that Jones is guilty of the offenses charged in the government's indictment. The question of a defendant's guilt or innocence is not for the court to decide, but will be determined by a jury. See United States v. Wilson, 77 F.3d 105, 110 (5th Cir. 1996) (affirming the district court's refusal to recuse itself where the court's comments concerned the defendant's guilt or innocence, which is a matter to be decided by the jury, not by the court).

Jones's third and final argument for ascribing bias to

this court is that when it fashioned his sentence, it improperly considered evidence from other trials to substantiate his involvement in drug trafficking and thereby "adopted the view that the defendant was involved in a drug distribution ring before he has been tried for such an offense." Jones Mem. at 8. As discussed supra, however, it is the jury, not the court, who ultimately will determine Jones's guilt or innocence. More important, it is established law in this circuit that "all of the strict procedural safeguards and evidentiary limitations of a criminal trial are not required at sentencing," so it is not "a denial of due process for the trial judge, when determining sentence, to rely on evidence given by witnesses whom the defendant could neither confront nor cross-examine." United States v. Carmona, 873 F.2d 569, 574 (2d Cir. 1989). The sentencing court's discretion is "largely unlimited either as to the kind of information he may consider, or the source from which it may come." United States v. Tucker, 404 U.S. 443, 446 (1972). Thus, Jones' third ground for moving for this court's recusal fails as a matter of law.

CONCLUSION

For the reasons discussed, the motion for voluntary recusal [doc. # 1047] is DENIED.

SO ORDERED this _____ day of August, 2002, at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge